

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MALIKAH SHABAZZ, as President of the LEFRAK
CITY TENANTS ASSOCIATION; JAMES
GALLOWAY, as Coordinator of the LEFRAK CITY
TENANTS LEAGUE; RUBI MUHAMMAD;
DURRIYAH HAKAM; REAVER CHERRY; ROSALIND
ANTOINE; and the BLACK LEADERSHIP ACTION
COALITION, INC.,

NOTICE OF REMOVAL

Case No. 17-CV-6637

Plaintiffs,

-against-

NEW YORK CITY BOARD OF ELECTIONS,

Defendant.

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**TO: THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK**

The Defendant, New York City Board of Elections (“BOE” or “the Board”) by its attorney, Zachary W. Carter, Corporation Counsel of the City of New York, respectfully moves this Court as follows:

1. On August 29, 2017, the BOE was personally served with a signed Order to Show Cause and Verified Petition, filed in the Supreme Court of the State of New York, County of New York, under Index No. 157686/2017, naming the BOE as the Defendant, and setting forth various claims for relief attendant to a BOE determination—which, as discussed below, was specifically taken to comply with a current remedial order issued by the Southern District of New York—to move a voting location to two nearby sites.

2. Copies of the Order to Show Cause and Verified Petition, along with their accompanying exhibits and affidavits, are attached as Exhibit “1.”

3. Plaintiffs bring this proceeding alleging that the relocation of the voting location is (1) discriminatory based on race, national origin and disability under Section 296(2) of the New York State Human Rights Law and Section 8-107(4) of the New York City Human Right Law; (2) violates their right to vote under Article I and II of the New York State Constitution; (3) violates their right to Equal Protection under Article I of the New York State Constitution; and (4) is arbitrary and capricious under Article 78 of the New York Civil Practice Law and Rules (“CPLR”).

4. The Petition appears to have been “artfully pled” to avoid removal, by omitting a necessary federal question in the state court pleading; however, it is in fact a civil action of which the Federal District Court has original jurisdiction pursuant to 28 U.S.C. § 1331 in that it is a challenge to Defendant’s action specifically taken to comply with a current remedial order issued by the Southern District of New York, entered in the case, United Spinal Ass’n v. Bd. of Elections in the City of New York, 10-CV-5653 (DAB), assigned to District Judge Deborah A. Batts.

5. A copy of Judge Batts’s Modified Order (ECF No. 130) is attached as Exhibit “B” to the Verified Petition.

6. Therefore, the instant case is in essence a collateral attack on that federal court Order, and thus one alleging claims arising under the laws of the United States, and therefore removable to the District Court without regard to the citizenship or residence of the parties, pursuant to 28 U.S.C. §§ 1441 and 1443.

7. This Notice of Removal is timely because it is being filed within thirty days of Defendant’s receipt of the Order to Show Cause and Verified Petition. See 28 U.S.C. § 1446(b).

8. Defendant will promptly file a copy of this Notice of Removal with the Clerk of the State Court in which the action is pending.

WHEREFORE, Defendant respectfully requests that the above-captioned action be removed from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York, and be assigned to District Judge Deborah A. Batts as a related case to United Spinal Ass'n. v. Bd. of Elections in the City of New York, 10-CV-5653 (DAB).

Dated: New York, New York
August 31, 2017

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s/

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